



UNITED STATES
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December 13, 2013

Hon. Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *U.S. Securities and Exchange Commission v. Magdalena Tavella, et al.*, Civil
Action No. 13-CIV-4609

Dear Judge Buchwald:

I write on behalf of Plaintiff U.S. Securities and Exchange Commission (the "Commission") to update the Court on the status of the litigation and to request a scheduling conference to set a deadline for the defendants to answer or otherwise respond to the Commission's Complaint in the above-captioned case.

A. Procedural Background and Case Status

On July 3, 2013, the Commission filed its Complaint and its *Ex Parte* Motion for a Temporary Restraining Order, Asset Freeze and Other Emergency Relief and Order To Show Cause Why A Preliminary Injunction Should Not Be Issued against the Defendants (the Commission's "TRO Motion"). (See Dkt. #7.) The Commission's Complaint alleges that defendants—Argentine nationals—purchased or sold securities in Biozoom, Inc., a penny stock company traded on the Over-the-Counter Bulletin Board ("OTCBB"), without an effective registration statement in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77e(a) and (c)].¹

¹ The Commission's complaint also alleges defendants Mariano Graciarena and Fernando Loureiro purchased 4.4 million shares of Biozoom stock without an effective registration statement (in violation of Section 5(c) of the Securities Act [15 U.S.C. § 77e(c)]), and were likely to sell these securities in public markets without an

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The Commission's TRO Motion sought to freeze the defendants' brokerage accounts holding Biozoom, Inc. shares, and the repatriation of any proceeds from the defendants' sale of Biozoom, Inc. securities. On July 3, 2013, the Court entered an *ex parte* temporary restraining order freezing the defendants' assets and ordering the defendants to repatriate any proceeds from the sale of Biozoom securities to the United States. (*See* Dkt. #5.) Shortly after entry of the Court's Order, on July 3, 2013, the Commission served each defendant a copy of the Commission's complaint, summons, the Commission's TRO Motion and supporting documents, and a copy of the Court's Temporary Restraining Order via e-mail and overnight international delivery service.²

On July 17, 2013, counsel filed notices of appearance on behalf of each of the defendants. (*See* Dkt. # 14, 17.) That same day, the parties filed a stipulation and proposed order granting the Commission's motion for a preliminary injunction, asset freeze and other relief. (*See* Dkt. #16.) The Court entered the parties' proposed stipulated order on July 17, 2013. (*Id.*) The Court's July 17th order freezes "all proceeds derived from sales of Biozoom stock under the[] [defendants'] control or over which they exercise actual or apparent investment or other authority, wherever located, in whatever form such assets may presently exist, or in any account whatsoever." (*Id.*)

Pursuant to the Court's July 3 and July 17 Orders, approximately \$15 million in cash proceeds from the sale of Biozoom stock has been frozen in the defendants' U.S.-based brokerage accounts along with 1,384,488 shares of Biozoom stock.³

On September 16, 2013, defendants' counsel filed a motion for leave to withdraw as attorneys for the defendants. (*See* Dkt. #20.) That motion was granted on September 24, 2013. (*See* Dkt. #23.) In addition, the Court vacated the August 26, 2013 deadline for the defendants to answer or otherwise respond to the Commission's Complaint. To date, no appearance has been filed on behalf of any of the defendants and no other schedule has been entered.

B. Proposed Schedule to Answer or Otherwise Respond to the Complaint

The Commission respectfully requests a scheduling conference to set a deadline for the defendants to answer or otherwise respond to the Commission's Complaint. The Commission proposes that the defendants be directed to answer or otherwise respond to the Commission's Complaint on or before February 3, 2014.

effective registration statement (in violation of Section 5(a) of the Securities Act [15 U.S.C. §77e(a)]). As of the date of the Commission's Complaint, Graciarena and Loureiro had not yet sold Biozoom shares.

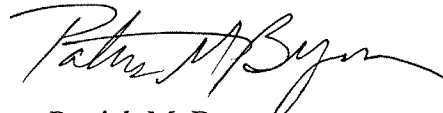
² The Court's July 3 Order provided that the Commission could serve Defendants via e-mail, overnight delivery service, and other means. (*See* Dkt. #5 at 5.)

³ On October 15, 2013, the Court entered a stipulation and order modifying the Court's asset freeze to permit the payment of brokerage commissions earned by Legend Securities prior to the entry of the Court's asset freeze. (*See* Dkt. #24.)

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In addition, in the event that the defendants do not respond to the Complaint by that date (or otherwise seek leave of Court to extend the time to respond), the Commission seeks leave to file a motion for a default judgment against any defendant failing to answer or otherwise respond to the Commission's Complaint.

Respectfully submitted,



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